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Law School Record Editors

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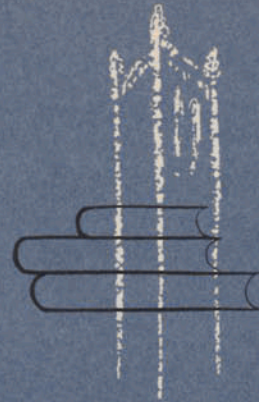
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THE UNIVERSITY OF CHICAGO

# The Law School Record



Volume 3

Chicago • Illinois

Number 1

## *The Class of '56*

Twenty-seven states and Panama are represented by the entering class of The Law School this year. The Class of '56 is made up of students from California, Connecticut, the District of Columbia, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Utah, Vermont, Virginia, and Washington.

The total population of the student body in the present year represents thirty-seven states, two territories, and seven foreign countries, with students registered from Alaska, Hawaii, Brazil, Greece, Israel, Italy, Korea, Panama, and Siam.

Many of the alumni have in the past expressed interest in where our students come from, both in terms of their home communities and the schools where they received their undergraduate training. In the academic year 1953-54, eighty-six colleges and universities are represented in the student body, literally from Maine to California and from Bangkok to Brazil. The following is a list of the schools:

Allegheny  
Amherst  
Antioch  
Beloit  
Bethany College (West Virginia)  
Brown  
Carleton  
City College (New York)  
Colgate  
Columbia  
Cornell  
Dartmouth  
De Paul  
DePauw  
Emory  
Fordham  
Grinnell



*The 1953-54 Leo A. Wormser Scholars. Left: Harold A. Ward III, Winter Park, Florida, A.B. University of Chicago, and Thomas L. Nicholson, Chicago, A.B. Princeton.*

Harvard  
Hamilton College  
Haverford  
Hobart  
Hollboll College (Copenhagen)  
College of Idaho  
Indiana  
Kalamazoo College  
Kent State University  
Kenyon  
Knox  
Lawrence College  
Loyola  
Marquette  
Marshall College  
Massachusetts Institute of Technology  
Maryville  
Mid-Pacific Institute (Honolulu)  
Northwestern  
Oberlin  
Olivet (Michigan)





*The Blake Scholar, Huey Thurschwell, New York, A.B. University of Chicago.*

Ohio University  
Princeton  
Purdue  
Reed College  
Rice Institute  
Roosevelt College  
Rutgers  
St. Mary's  
Southeastern State  
Swarthmore  
Syracuse  
Talladega  
Tulsa  
Trinity College  
U.S. Military Academy  
University of Athens  
University of Bangkok  
University of Basel  
University of Brazil  
University of California (Berkeley)  
University of California (L.A.)  
University of Chicago  
University of Connecticut  
University of Dayton  
University of Heidelberg  
University of Illinois  
University of Maine  
University of Michigan  
University of Minnesota  
University of Missouri  
University of North Dakota  
University of Oklahoma  
University of Oregon

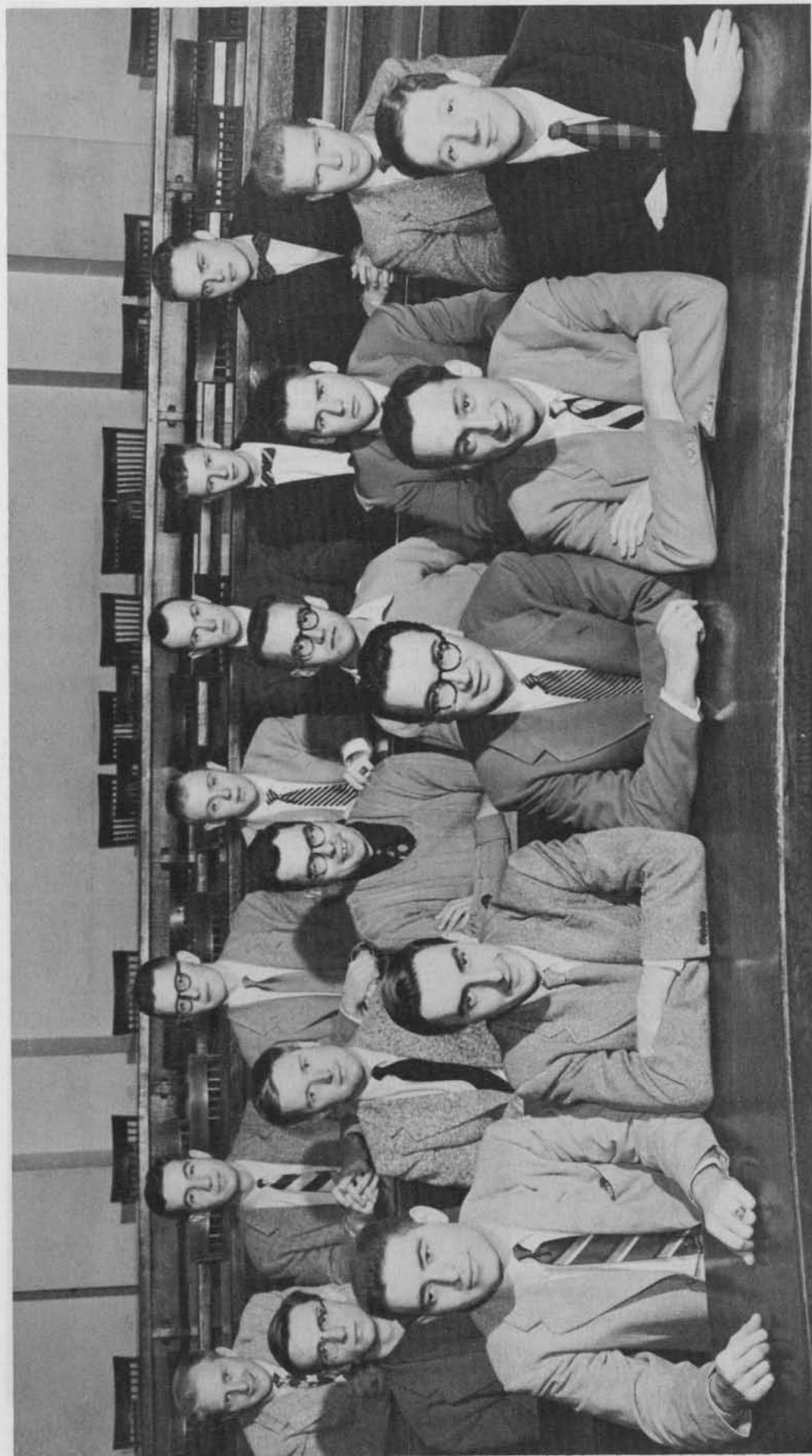


*The Phi Sigma Delta Scholar, Norman Abrams, Chicago, A.B. University of Chicago.*

University of Panama  
University of Texas  
University of Turin  
University of Utah  
University of Virginia  
University of Washington  
University of Wisconsin  
Wabash College  
Washington and Jefferson  
Wesleyan University (Connecticut)  
Whitman College  
Whitworth College  
Wright Junior College  
Yale



*The Mary Beecher Scholar, Marilyn-June Blawie, Bridgeport, Connecticut, A.B. University of Connecticut.*



## NATIONAL HONOR SCHOLARS, 1953-54

(Left to right)

1st row: George Miron (Rice); Richard Power (Haverford); William Robert Padgett (College of Idaho); Irwin J. Dines (Oberlin); Charles Doctor (Kenyon)  
 2d row: John S. Tatge (Laurence); James C. Black (Amherst); George Kuypers (Swarthmore); John Peter Schma (Wabash); Gerald F. Giles (Colgate); William Halley (St. Mary's)  
 3d row: Bruce E. Kaufman (DePauw); Charles R. Andrews (Yale); William E. Van Arsdell (Whitman); John W. Gibson (Emory); Richard K. Hooper (Trinity); Robert S. Bailey (Wesleyan); Robert C. Poole (Carleton)  
 Not present: Kathleen Beaufait (Reed); Clyde W. McIntyre (Kalamazoo)

## New Zealand—1953 ALLISON DUNHAM

Under the auspices of the United States Educational Foundation for New Zealand (the Fulbright program) I spent our Spring and Summer quarters teaching at the University of New Zealand in their Autumn and Winter terms (March–September). I was officially a visiting professor of law at Victoria University College in Wellington, but I also taught at the university colleges in Auckland, Christchurch, and Dunedin, which are also constituents of the federal University of New Zealand.



Allison Dunham

The primary purpose of my visit was to help introduce the case system of teaching law to New Zealand. The three full-time professors of law have visited the United States under Carnegie grants, and two of the three full-time lecturers have also seen American legal education in operation. These teachers were anxious to develop this method of teaching. I taught landlord and tenant law from a collection of English and New Zealand cases which I had prepared from our own Law School library. Only time will tell how successful my visit was. I was told that some of the practitioner-teachers regarded a "lecture" as the reading of a passage from a text at a rate slow enough to permit manual transcription by the students. The younger part-time teachers do not do this, but they do more or less repeat orally that which they have in a prepared syllabus.

My first introduction to practical New Zealand law came on the day of my arrival. A lease of a house had been arranged for me, and, when I went to pick up the lease and sign it, I found the first thing I had to do according to the terms of the lease was to pay the fees of the lessor's solicitor for preparing the typewritten lease—a sum equal to about 5 per cent of gross rental. Apparently even large landlords use this system, and it was impossible to purchase a printed form lease in a stationery store. My second introduction to practice came when I drew the check for the fees on my local bank. I discovered that my checks were all payable to bearer. When I asked the solicitor whether he wanted it that way, he told me that the common practice was to "cross" the check by drawing two parallel lines across its face. This made the check non-negotiable, and, if I really wanted to be doubly secure, I inserted "& Co." within the lines, which then prohibited my bank from paying across the counter. As I read their negotiable instruments law, this practice is to protect the bank rather than the drawer. My third introduction to practice came after I gave the check. The solicitor insisted on giving me a receipt. When I suggested that my canceled checks were sufficient receipts, I was told that the

banks kept the checks as their own receipt and that under the solicitor's insurance scheme he was required by law to give me a receipt on an official numbered receipt prepared by the law society. Each solicitor pays to the law society a sum each year which is used to reimburse clients against solicitor's fraud in handling a client's money. Incidentally, New Zealand does not have the English separation between solicitor and barrister. The educational requirements are different, and a separate license is required, but a person can be both; and, unless the barrister is a queen's counsel, he may be in partnership with a solicitor.

Even in the larger cities the bulk of practice in any one firm is conveyancing, estates, divorce, and personal injuries. There is very little "corporation law" and no commercial law practice. The accountants have the tax business except for estate tax work; and, in spite of much government regulation, there is little administrative law practice. One common solicitor's function was new to me. It was a very common practice for a client to request a solicitor to invest money for him not as trustee but as an investment adviser and custodian of the funds. The solicitor's remuneration for this service did not include a procurator fee (considered improper in most cities) but consisted of fees (collected from the borrower) in preparing any necessary papers and of collection fees when the borrower made his payments at the solicitor's office. This practice was so common that the first place a purchaser of land thought of to ask for a loan was a solicitor's office.

Both in their trustee work and in this kind of investment business the solicitor's thinking was dominated by land security and the statutory list of legal investments. When pushed in discussion, they conceded that they could and did in trusts commonly contract out of the list

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The Class of 1915 Scholar, Roger C. Crampton, St. Johnsbury, Vermont, A.B. Harvard University.





*The Raymond Scholars (left to right): Boris Auerbach, East Orange, New Jersey, Lee Vickman, Chicago, and Jack D. Beem, Chicago, all graduates of the College of the University of Chicago.*

### MAX RHEINSTEIN *Europe—1953*

An invitation to Sweden and the assignment to the team sent to Frankfurt under the Chicago-Frankfurt Exchange Project gave me the opportunity during the spring of 1953 again to engage in practical comparative law in Europe.

The invitation to conduct at the three Swedish universities seminars on "Methods of Legal Thought in America" was extended to me in the early weeks of the year. The seminars should not only have as their subject matter the topic indicated but also were to constitute demonstrations of American teaching methods. Materials were thus prepared here to be mimeographed in Sweden and to be distributed in advance among the participants. The Swedish universities organized two sets of meetings, each to consist of two sessions of two hours, one to be held for the universities of Upsala and Stockholm in central Sweden, and the other at the University of Lund in southern Sweden. The sessions were held in April. Both series were attended by faculty members and postgraduate students of the universities in question, and lively discussions were had at the sessions themselves as well as at the parties by which they were followed.

The work at Frankfurt was conducted within the framework of the Chicago-Frankfurt exchange project. The team which was sent to Frankfurt for the summer semester of 1953 consisted of Professor Everett Hughes, chairman of the Department of Sociology, and myself as senior members, and three junior members: Eugene Litwak, associate director of the University of Chicago Family Research Center, and Samuel Stoljar and Gerhard Müller, research assistants at the University of Chicago Comparative Law Research Center.

Both Professor Hughes and I participated in the regular teaching activities of the Johann Wolfgang Goethe Universität. Professor Hughes offered a course on the

"Sociology of the Professions," while I taught the course on "Private International Law," which met four times a week and for which about a hundred and eighty students registered.

Under the agreement made between the two universities, joint research projects are to be undertaken by the visiting teams together with the local faculties. For the summer semester of 1953 it was decided to choose as the joint research project a topic that for some time had been on the agenda of the University of Chicago Comparative Law Research Center, viz., that of the relationship between legal regulation and family stability. This problem may be defined as follows:

In our civilization we regard it as desirable that the family constitute a stable group. Marriage is concluded for life, and a premature termination of the marriage relationship is regarded as an evil. The norms of religion, ethics, and the mores are all aiming at family stability and at discouraging abandonment, separation,

or bigamy. These social pressures are sought to be reinforced by the coercive measures of the legal order such as the use of compulsory state power to enforce family duties of support. Coercion by means of law is not directly usable, however, to compel married parties to live together and even less to live together happily. Only indirectly can coercion through the machinery of the law be used to



*Max Rheinstein*

induce married parties to stay together. Among these indirect ways a conspicuous place seems to be occupied by that set of legal norms which, under pain of punishment, prohibit a married person from entering upon a new marriage without having first obtained the dissolution of his prior marriage by a decree of divorce, and then limit the possibility of obtaining such a decree to those more or less narrowly defined situations which are enumerated in the divorce act as "grounds for divorce." To what extent, if any, are such laws effective? More concretely, it may be asked to what extent, if any, has family stability been increased or decreased by changing the divorce law in the direction of greater strictness or ease? The desire for a reform of the present divorce laws is widespread in America, but how effective would a proposed reform law be to achieve the desired end of preserving or increasing family stability? Perhaps some of the proposals now current might do more harm than good. Certainly no reform should be attempted while we are groping in the dark about its probable effects.

However, attempts to find an answer to the problem are confronted with difficulties. It is, first of all, neces-

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## The Law and Group Ethics

*An Address by William T. Gossett, Vice-President and General Counsel, Ford Motor Company, on Tuesday Evening, November 10, 1953, at a dinner for first-year law students, the faculty, and members of the Alumni Board and Visiting Committee.*



*Edward H. Levi and William T. Gossett*

Some things about the society in which we live are more apparent to me today than they were when I sat where you now sit, as young students of the law.

One of the more significant of those things is the relation between the law and our moral standards. Over the years I have become more and more impressed with the overriding significance of moral considerations in the questions put to me as a corporation lawyer. And I want to talk to you tonight about the law and ethics, with particular reference to the big economic organizations with which I am in daily contact.

To an extent unrealized and unpredicted during my law-school days, the law today reaches far beyond the morality of individuals, to encompass the behavior—the moral conduct, if you will—of large groups of individuals united in a common interest. Thus, the same standards of ethics and morality generally applied in the Western world to individual conduct are being applied to group conduct, and the formal application of those standards is increasingly to be found in our laws.

Perhaps I should begin with a few basic ideas. Ethics, as I understand the term, considers man as he ought to be. Law, on the other hand, has no choice but to deal with him as he is. Ethics records man's dream of his best self—a beacon in the darkness by which, if he has sufficient wisdom and strength, he may steer his way to self-improvement. Law, however, is said to record the minimum standards of conduct to which, at a given time and place, men may be required to conform.

But despite this apparent gap between law and ethics, their relationship is clear and direct; the law is responsive to our moral sensibilities. It may lag behind somewhat, but it is always tending toward a goal which would be a perfect codification of our ethical standards. Whenever the community becomes conscious of the de-

velopment of a course of conduct inconsistent with the fundamental principles of ethics, the law soon reflects the fact.

We are all familiar with that basic principle of all codes of ethics, the Golden Rule. For centuries it has had general acceptance as a standard of conduct for the human individual. In most civilizations down through the ages, some version of the Golden Rule has been a touchstone by which men might gauge their conduct toward one another. The idea that we should do unto others as we would have them do unto us is today honored, even when not observed, among all civilized people. Indeed, I understand that, in essence, it is a fundamental tenet of no less than seven of the eleven major living religions of the world.

Our law, as it relates to individual behavior, plainly reflects the influence of that foundation of all codes of conduct. Murder, theft, arson, all the branches of our criminal law; trespass, defamation, assault and battery, and other rules of the law of torts; the law of contracts; all of these show that we have expressed in basic legal principles our expectation that individuals shall conform to the Golden Rule.

Most of these rules developed in a simpler age: simpler in its science, simpler in its economics, simpler in its problems of human relations.

We live in an increasingly complex age. The Industrial Revolution burst open a door to a whole new area of material opportunities for everybody. Within our own time we have seen this area developed with almost miraculous results: the radio and television, the automobile and the supersonic jet plane, radar, nuclear fission; and the use of huge special-purpose machine tools and the assembly line to bring to hundreds of millions of people a standard of living never dreamed of even by the kings of antiquity.

There is one underlying fact in this evolution that is often overlooked. For my purpose this evening, it is a most significant fact. It is that making the most of these new opportunities was a job that could not be done by any one man or even by many small groups of men working together. The job eventually demanded large aggregations of men working as single units.

From that fact developed the large corporation as we know it today. From that fact there inevitably developed the labor union and "big labor" as we know it today.

What I am saying is that what we now describe as bigness was an inevitable consequence of the Industrial Revolution. But unfortunately bigness did not come to us complete with operating instructions. There were no well-developed rules to govern the conduct of the new group personalities that comprise bigness. In a very real sense, the large aggregations of capital that are big business, and the large aggregations of workers that are big labor, began their operations in a legal and moral vacuum.

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*The 1953-54 Board of Editors of the University of Chicago Law Review. Front row, left to right: Hugh Brodkey, Chicago; George Kaufman, New York; Paul Wenger, Jr., West Hartford, Connecticut; Willis D. Hannawalt, Cumberland, Ohio; Alan Rosenblatt, New York; second row: William W. P. Jochem, Peoria, Illinois; David N. Brenner, Oak Park, Illinois; Oliver Axster, Milwaukee, Wisconsin; Elaine Goldman, Sturgeon Bay, Wisconsin; Theodore W. Rosenak, Milwaukee, Wisconsin; Harlan M. Blake, Huron, South Dakota; third row: Renato W. Beghe, Chicago; Isaac Goldman, Chicago; William H. Brown, Jr., Huntington, West Virginia; Gordon P. Ralph, Wauwatosa, Wisconsin; back row: Hal M. Smith, Springfield, Illinois; Boris Auerbach, East Orange, New Jersey; Gilbert A. Cornfield, Chicago.*



*Professor and Mrs. Walter Blum were on hand to welcome the entering students at the Beecher Hall reception.*



*Coffee time in the Beecher Hall Lounge has already become a tradition at The Law School.*



## Sixth Federal Tax Conference



*The Planning Committee for the Sixth Annual Federal Tax Conference at a luncheon meeting. Standing are (left to right): Harry Sutter, James M. Ratcliffe, Walter J. Blum, and John A. Howard. Seated at the head of the table is William A. McSwain, chairman of the Planning Committee.*

The Sixth Federal Tax Conference sponsored by The Law School in collaboration with the School of Business and University College was held on October 28, 29, and 30, 1953. Professor Walter J. Blum and Assistant Dean James M. Ratcliffe represented The Law School on the Planning Committee. As in past years, the conference covered current developments in the fields of federal income, estate, and gift taxation.

John E. Jeuck, dean of the School of Business, welcomed the delegates, and the opening session on "Tax Policy and Prospects" was chaired by Professor Blum. Kenneth W. Gemmill, assistant to the Secretary of the Treasury, spoke on "The Tax Policies of the Administration," and Stanley S. Surrey, professor of law, Harvard Law School and chief reporter of the proposed new Income Tax Code, reviewed "The American Law Institute's Proposed Income Tax Statute."

The session on "Rulings, Cases, and Tax Accounting" was under the chairmanship of James D. Head, of Winston, Strawn, Black and Towner. At this afternoon session, Vance N. Kirby, of Daily, Dines, Ross and O'Keefe, reviewed "Important Recent Administrative Rulings and Interpretations"; Charles W. Davis, of Hopkins, Sutter, Halls, DeWolfe and Owen, analyzed significant recent decisions in "Taxes and the Courts, 1952-53"; and Herman T. Reiling, of the Internal Revenue Service, in "Tax Accounting for Repricing and Other Reserves" gave a lawyer's answer to the criticism that income-tax accounting does not give proper recognition to the accounting concept respecting reserves for meeting liabilities.

Paul Johnson, of Ernst and Ernst, served as chairman of the third session, devoted to the areas of "Employer and Employee Problems." Tax questions arising from

supplemental and incidental benefits received by employees were reviewed by Ray A. Hoffman, of Price, Waterhouse and Company, under the heading "Fringe Benefits for Employees." William C. Childs, of Hopkins, Sutter, Halls, DeWolfe and Owen, discussed "Deferred Compensation Plans for Executives" with reference to their purpose, provisions, and effect and emphasized income and estate tax aspects of such plans. "Employee Stock-Purchase Arrangements" was the subject assigned to Charles S. Lyon, of the New York Bar.

"Purchase and Sale of Corporate Business" was the theme of the fourth session, under the chairmanship of William M. Emery, of McDermott, Will and Emery. Frederick R. Shearer, of Mayer, Meyer, Austrian and Platt, reviewed tax planning in buying or selling a corporation or its assets under the title "Taxable Transfers of Corporate Businesses." An evaluation of alternative routes for effectuating tax-free transfers of corporate business, including mergers and consolidations, was the subject discussed by Robert F. Graham, of Gardner, Carton, Douglas, Roemer and Chilgren. "The Acquisition of Loss Companies" was the subject of the paper by Thomas N. Tarleau, of Willkie, Owen, Farr, Gallagher and Walton (New York).

Harry B. Sutter, of Hopkins, Sutter, Halls, DeWolfe and Owen, was chairman of the session on "Estate Planning." The practical considerations in utilizing the marital deduction was discussed by Roland K. Smith, of Isham, Lincoln and Beale. In "The Use of Powers in Estate Planning" Austin Fleming, of the Northern Trust Company, presented a comprehensive of tax and other factors in the providing for powers over principal and income either in inter vivos or testamentary dispositions. Mr. Fleming and Mr. Smith joined in a panel with Paul E. Ferrier, of the First National Bank of Chicago, and Professor William H. Pedrick of the Northwestern



*A group of the participants of the Sixth Annual Federal Tax Conference are (left to right): Vance Kirby, Raymond Hoffman, Charles Davis, Roland K. Smith, William C. Childs, Paul Ferrier, and William Pedrick.*

University School of Law on "Problems concerning the Marital Deduction and Powers."

The conference concluded with a round-table discussion conducted by Walter J. Blum, William M. Emery, William N. Haddad, Paul Johnson, and Harry B. Sutter, with participation by members of the audience. The problems discussed were submitted in part by the registrants.

This sixth annual conference was the largest yet held, with a capacity audience present at every session. As in the past the entire proceedings of the conference is to be published in *Taxes* magazine.

### Dwight P. Green '12, New Fund Chairman



Dwight P. Green

The alumni have already received advance word from Dwight P. Green '12, General Chairman of the 1953-54 University of Chicago Law School Fund. As this issue of the *RECORD* goes to press, we are happy to announce that the anticipatory gifts and pledges give this year's Committee a running start on the coming drive.

Many of the chairmen in Chicago have already been appointed, and they are at work organizing their efforts for next spring. This year, in addition to the previous state organization throughout the country, greater emphasis will be placed on across-the-board class contributions, with alumni throughout the nation joining with their classmates in Chicago to build class totals.

Serving with Dwight Green on the Fund Committee are: Edward Felsenthal '10, Charles Holton '10, David Levinson '12, Morris E. Feiwell '15, Edward Stofft '23, Herbert C. DeYoung '28, Thomas Mulroy '28, Stanley A. Kaplan '33, Earle F. Simmons '35, P. Newton Todhunter '37, Owen Fairweather '38, Laurence A. Carton '47, Lawrence Howe, Jr. '49, James J. McClure '49, and Abner Mikva '51. Of course, Glen A. Lloyd '23, University Trustee and President of the Law School Alumni Association, is *ex officio* very much a member of the Fund Committee.

Morry Feiwell is doubling also in an elder statesman role and as chairman of the classes of 1914 to 1922. Under his dynamic chairmanship last year, great progress was made in organizing the classes and telling the story of the School's needs and opportunities to hundreds of alumni.



Morris E. Feiwell

### The Law School Revisited

John Jewkes

An Englishman is not long in this country before he discovers that you in the United States are never more happy than when you are offering hospitality to a guest and never less happy than when that guest seeks to tender his thanks. I shall respect your feelings in these matters, but you must allow me to say that I am greatly obliged to you for asking me here today and for inviting me to speak.

When I first asked Dean Levi what I should talk about, he said, "Tell them what you are doing in The Law School." Now I do not know whether the usage of language is, in these respects, exactly the same in our two countries. But in England this phrase "what are you doing in The Law School" could have two quite distinct meanings. It might mean: "What tasks are you currently engaged upon?" I do not intend to speak about that, partly because I have already had an opportunity of discussing such matters with some of your number, partly because I fancy that the details might be of no great interest to most of you. But there is another possible meaning of this question. It might mean: "Why are you, a professor of economic organization in the University of Oxford, to be found at all in The Law School of the University of Chicago?"

There were in fact three reasons, each of them strong in itself, which taken jointly seemed to me to be irresistible. The first was the reputation of The Law School itself. If you do not already know it, you should be told what a high standing The Law School has wherever academics meet and talk together throughout the world. From the gossip of the common rooms I learned that your Law School had gathered together a group of lively scholars who pursued their studies with great enthusiasm and energy but also with that tinge of skepticism, not to say of conservatism, which adds the salt to all intellectual effort. I learned that the School takes a broad view of what is implied in the study of law and that it recognizes that legal studies lie very close to the heart of American culture, much closer than is the case in Great Britain. I gathered that, without any sacrifice of the idea that law is a good discipline in its own right, the School perceives that there are other subjects contiguous to the study of law, in which the thinking of lawyers has much to contribute and from which law itself has something to gain. And I further learned that the School is known to possess in its present Dean, if he will allow me to say so in his presence, a man who, having already established one reputation for legal scholarship, is busy creating another in that most subtle and difficult field of administration, the art of holding together a group of academics, each of whom, in the nature of things, is likely to have a touch of the ballerina in his temperamental make-up. All these things I heard of your School. And because of them, any scholar would feel flattered by an invitation to join in the



work of the School for a time. In my own case, the fact that I already had close friends in the School, that my own mind has a bias toward the values of tradition and continuity, and that, though an economist, I know that economics is not enough by itself to give us working answers in the framing of policy—for all these additional reasons, the invitation was especially attractive.

The second reason I was anxious to come may not have occurred to you. It is this. If we look around this troubled and confusing world and ask upon which group of people we must most rely, in the next decade or two, to steer us through the frightful changes and perplexing problems to which we are heir, which group upon whose knowledge, wisdom, and courage we will be more dependent than upon any other, the answer surely is clear. It is upon the young men who are now passing and will pass during the next few years through the universities of the United States. In saying this, I am not, of course, belittling the responsibilities which fall upon the universities of other countries. But the United States has, willy-nilly, loaded upon its shoulders, by virtue of its power and its political and social ideals, world responsibilities never taken up by any country before—not even by Great Britain at the height of its power and influence in the nineteenth century. So that these young men, who will ultimately be the leaders in thought and action among you, are destined to live in a rough world. One can only hope and pray that they will be tough enough in body and spirit and tough enough in mind to make a good job of their most formidable tasks. And what their education and their teachers can do for them will not be insignificant in determining the final outcome of the breathtaking hazards of our age. So that I look upon this opportunity you have given me of working for a time with some of these young men, of playing even a tiny role in the effort to give these men the best preparation that can be given to them, as a privilege of a very special kind. And I hope you will not think me presumptuous if, from what I have seen of your young men here, from the few I see as American Rhodes Scholars in Oxford, from the few I see as airmen in England—who spend their time sweeping the English skies with their ear-splitting chariots—from all these contacts I can say that their teachers have superb material to work with.

There is a third reason why I am delighted to be here. It may be that an odd fish such as myself in The Law School may, by very virtue of his oddity, have something to contribute. In the reading in The Law School great reliance is placed upon the case method. I am sorry but I cannot teach my stuff by the case method. I do not think it can be taught that way, and, even if it could, I have no experience in the technique. And although I have tried, in the last twenty-five years, to study industrial organization in the United States, I naturally know less about it than I do about industrial organization in Great Britain, and I may know less about industrial organization in the United States than some of my students.



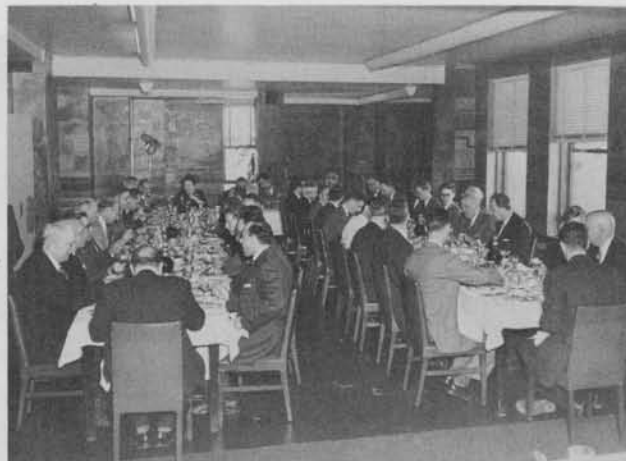
*Professor Jewkes (right) with Professor Aaron Director*

But—and now I am going to say something quite terrible—I do not think that imparting actual knowledge to students is really the most important thing that teachers can do for those who are in their charge. It is not what the student knows but how he does his thinking that matters. It is not how much ammunition he is loaded up with but how good is his shooting technique which counts. Of course, a well-stocked mind is a good thing to possess. But a powerfully operating mind, a mind trained to go to the heart of a subject swiftly, to recognize the important evidence, to spot the inconsistencies, to move securely from the known to the unknown—these are the mental habits which the teacher should be trying to build up among his young men. Let us remember that these young men, when they leave their universities and go out into the world, are going to have thirty or forty years to acquire facts, to gain knowledge. But they have only three or four years in their university, precious years for them and for their teachers, in which for once, and never again, they will have the leisure, the surroundings, and the companions best designed to give them an opportunity to toughen up their minds. These would be partly wasted if they were devoted purely to accumulation of knowledge; it is the bigger prize of wisdom and of the power to think that these young men should be after.

Now please do not misunderstand me. The discipline of the mind cannot be undertaken in a vacuum. It must be carried on by reference to some organized body of thought, some corpus of knowledge. I am sure, from the results I have seen achieved in many universities, that law is one of those bodies of doctrine and forms of intellectual activity which provide a suitable milieu within which this toughening of the mind can go on—perhaps one of the best. And I am not leaving out of account the fact that young men at universities are also preparing themselves for the making of a living. But there are other good disciplines—such as mathematics, history, the classics—and, as I am suggesting, perhaps economics.

Now I would not be so confident in these matters, perhaps I would hardly have dared to put this point so

*(Continued on page 20)*



The visit of Dean Zelman Cowan of the University of Melbourne, Australia, Law School provided the occasion for a unique alumni gathering. The newly elected alumni judges—McCormick, Murphy, Tucker, and Bryant—joined with Dean Levi, members of the faculty, and the alumni to welcome the Australian legal educator, who was a visiting member of our Law faculty in 1949. Left is Dean Cowan and Judge B. Fain Tucker '23. Judges Richard B. Austen '26 and Robert English '33 were unable to attend. Federal District Judge Joseph S. Perry '27 and newly designated Federal Court of Appeals Judge Elmer Schnackenberg '12 were among those at the head table.



Visiting Committee Chairman Henry F. Tenney '15 congratulated Judge Elmer Schnackenberg '12 on his previous day's appointment to the Federal Court of Appeals. Left is Earle F. Simmons '35.



Sydney Schiff '23 (left) with Thurlow G. Essington '08 and Edward R. Johnston.



Judge Arthur Murphy '22, Philip B. Kurland, professor of law, and Wilber G. Katz, James P. Hall Professor of Law.



Professor Malcolm P. Sharp, Assistant Dean Jo Desha Lucas, Federal Judge Joseph S. Perry '27, and Bigelow Fellow John Bodner.



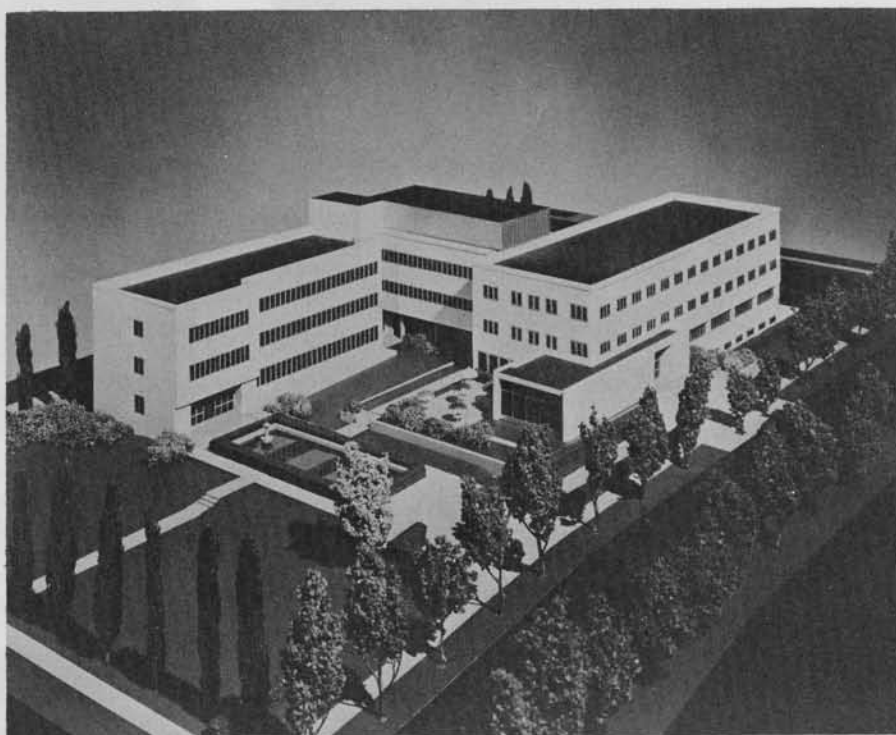
## Welcome to the A.B.A. Center

"Cornerstones are commonplace unless they gain distinction from the vision and faith of those who lay them. Our vision today is of an American Bar Center which will focus the influence and pilot the activities of the largest association of lawyers in the world. This influence literally saturates American intellectual life. Generally, in each community its members are among the most respected and articulate leaders in every field of thought and action."

With these words, United States Supreme Court Associate Justice Robert H. Jackson opened his address at the ceremony in International House of the University of Chicago on Monday, November 2, 1953, preceding the cornerstone-laying ceremonies for the new Center of the American Bar Association. Mr. Justice Jackson spoke of the rampant lawlessness that has been witnessed by twentieth-century man and of the high responsibility which the legal profession has in every area of life.

"The question we face today is whether the profession which we envision as centering here will have any saving faith to offer to an anxious and bewildered people. I think it has. A matter-of-fact and practical profession has courage and idealism to assert its belief in law and in the rule of law as the last best hope for an orderly and tranquil nation and for a peaceful world."

He summarized a creed for the legal profession in which law operates as an intellectual discipline, as an authority beyond personal prepossessions, passions, and interests, as a growing science of civilized life, as the only authority for the use of coercive force, and set forth



*On November 2, 1953, the cornerstone ceremonies were held for the new home of the American Bar Association at the Midway and Woodlawn Avenue. In addition to housing the national headquarters of the Association, the handsome new structure will provide facilities for legal research and serve as a clearing-house for such studies.*

the ideally high standards of the bench and bar. In conclusion he stated:

"A story that I have often told seems especially apt today. A visitor at a cathedral under construction questioned three workmen as to what they thought they were doing. The first muttered, 'I am making a living.' The second gave the uninspired reply, 'I am laying this stone.' The third one looked up toward the sky, and his face was lighted up by his faith as he said, 'I am building a cathedral.'"

"What are we doing today? We are building a cathedral to testify to our faith in the rule of law."

Chancellor Lawrence A. Kimpton addressed the convocation and expressed the pleasure of the trustees and faculties of the University of Chicago at the location of the American Bar Association Center adjacent to the Quadrangles. He spoke of the opportunity afforded to our Law School and to law schools throughout the country for co-operative research and closer association between the schools, the bench, and the bar through the establishment of the new center.

*At the ground-breaking for the A.B.A. Center last summer are (left to right): Harold H. Bredell, treasurer of the American Bar Foundation; C. I. Knudson, construction engineer; C. B. McIntyre, American Bar Foundation Fund Chairman; Joseph Z. Burgee, architect; Richard Bentley, vice-president, Chicago Bar Association; E. A. Courter, construction engineer; and Dean Edward H. Levi.*



Supreme Court Associate Justice Robert H. Jackson addressed the convocation held in International House preceding the cornerstone-laying ceremonies.



The reproduction of the special A.B.A. seventy-fifth anniversary stamp decorated the International House auditorium at the historic proceedings.



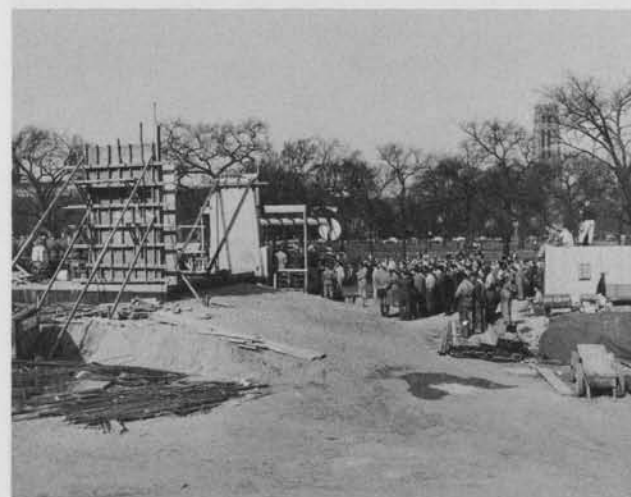
Left to right: Mr. Justice Robert H. Jackson, Justice Joseph E. Daily of the Supreme Court of Illinois, and a Convocation guest with Chancellor Laurence A. Kimpton.



George Maurice Morris '15, former president of the American Bar Association, ran into an interesting traffic jam while checking his coat.



Mayor Martin H. Kennelly (left) brought the greetings of the city of Chicago and looked on as the cornerstone was set in place.



The tower of Rockefeller Memorial Chapel looms across the Midway from the new site of the A.B.A. national headquarters.



## The Research Programs

The University of Chicago Law School is one of the centers of scientific inquiry into the law. Major studies are now under way into the nature and operation of the jury, the characteristics and performance of arbitration as a sublegal system, and the public's attitude concerning the distribution of the tax burden with special reference to the federal income tax. These studies were made possible by a grant of \$400,000 received by the School from the Ford Foundation for work in the area of law and the behavioral sciences. Through the assistance of grants from corporations and foundations, the School is conducting a number of research projects in the law-economics area, particularly in the field of antitrust. Grants from the Law Alumni Fund have now made possible the creation of a Law Revision Staff. In addition, Professor Max Rheinstein is conducting a comparative law study into the extent of the effectiveness of law restricting the possibility of remarriage as a means to reduce the incidence of family breakdown.

The jury project is under the direction of Professor Philip B. Kurland, who joined the faculty of The Law School in the summer of 1953. Professor Kurland's prior experience includes practice in New York City and teaching at Indiana, Stanford, and Northwestern. He is a former president of the *Harvard Law Review* and from 1945 to 1947 was managing editor of the *Federal Bar Journal*. He served as law clerk to Judge Jerome N. Frank, '12, and to Mr. Justice Frankfurter. Professor Kurland is assisted by Victor Stone, Margaret Keeney Rosenheim, and Dale W. Broeder. Mr. Stone is a graduate of Oberlin and of Columbia University Law School. He practiced in Chicago from 1949 to 1953 with the firm of Sonnenschein, Berkson, Lautmann, Levinson and Morse. Mrs. Rosenheim attended Wellesley and the University of Chicago Law School. She received her law degree in 1949 and has been an instructor in the School of Social Service Administration. Mr. Broeder is a graduate of Willamette University and the University of Chicago Law School. Last year he served as a Bigelow Teaching Fellow.

Miss Soia Mentschikoff (Mrs. Karl Llewellyn) directs the arbitration study. Miss Mentschikoff joined the faculty of the Law School in 1951. She is a graduate of Hunter College and Columbia Law School. She was engaged in the practice of law in New York City from 1937 to 1947. Miss Mentschikoff was a professor of law at the Harvard Law School from 1947 to 1949—the first woman law professor on that faculty. From 1944 to 1953 she was Associate Chief Reporter of the Uniform Commercial Code. Miss Mentschikoff is assisted by Jean Allard and Norman Miller. Miss Allard is a graduate of Culver-Stockton College and of the University of Chicago Law School. She holds a Master's degree from Washington University. Miss Allard was an instructor at



Norman Miller, Soia Mentschikoff, and Allison Dunham—on the arbitration project.

the University of Missouri and a counselor in the Psychology Department at the University of Chicago. Mr. Miller is a graduate of the London School of Economics and holds a graduate law degree from the University of Chicago. Mr. Wallace Rudolph, a recent graduate of the School, also has been working on the arbitration project.

The study of attitudes concerning the distribution of the tax burden has just been begun, and the staff is not yet organized. The study will be directed by Professors Walter Blum and Harry Kalven who are the authors of *The Uneasy Case for Progressive Taxation* recently published by the University of Chicago Press. Each one of the three studies has the guidance, supervision, and help of Professor Fred L. Strodbeck and Professor Hans Zeisel. Mr. Strodbeck joined the faculty of The Law School this year; he has his Doctor's degree from Harvard and from 1950 to 1953 was a member of the Sociology Department at Yale. At Chicago he now serves on the sociology, psychology, and law faculties. Mr. Zeisel has taught at Rutgers and Columbia; he is the author of



Professor Strodbeck and members of his staff at work with some of the equipment used in experimental research in the jury and arbitration projects.



Fred Merrifield

*Say It with Figures* (Harper's, 1947) and is now president of the Market Research Council of New York. In their behavioral science work on the projects, Strodtbeck and Zeisel are assisted by Margaret Robertson, Robert Rosenthal, and Noreen Haggard. Miss Robertson has served as a research and teaching assistant at Yale. Mr. Rosenthal is a graduate student at the University in psychology, and Mrs. Haggard in sociology. Professor Rheinstein's study is part of the work of the Comparative Law Institute, which he directs, and is described in his article in this issue of the RECORD. For the social science aspects of all the studies the School has had the active help of Professor Everett C. Hughes, chairman of the Department of Sociology; Dr. James Miller, chairman of the Department of Psychology; and Professors Robert Redfield and Edward Shils, as well as other members of the Social Science Division.

In the law-economics area four studies are being conducted. Mr. John Jewkes, one of the leading British economists, the author of *Ordeal by Planning*, and professor of economic organization at Oxford University, has come to The Law School as a Visiting Professor and, with the assistance of Richard Stillerman, is engaged in a study of the correlation between large-scale enterprise and the development of inventions. Ward Bowman and Robert Bork are engaged in an economic and legal study of resale price maintenance. Mr. John McGee, on leave from the University of California at Los Angeles, is working on a study of price discrimination; and Mr. William Letwin is continuing his work on the early history of the Sherman Act.



On the jury project—Philip Kurland, Margaret Keeney Rosenheim, and Victor Stone.

The Law Revision program is under the direction of a faculty committee composed of Allison Dunham, chairman, Walter Blum, Jo Desha Lucas, and Karl N. Llewellyn. Mr. Fred Merrifield has been appointed Research Associate on Law Revision. Mr. Merrifield, a graduate of The Law School in 1934, has practiced in Rock Island, Illinois, for about seven years. His career was twice interrupted by service in the Judge Advocate General's Department of the Army. The Law Revision program will include studies and drafting on matters suggested by the Council of State Governments, the Conference of Attorneys General, the Conference of Chief Justices, the Commissioners on Uniform State Laws, committees of bar associations, and by individual practicing lawyers. The faculty committee will select the topics. An advisory group of experts in particular areas will be asked to comment on and to help in formulating the proposed legislation. At present work is in process on charitable trusts and also on habitual offenders.



William Letwin, Robert Bork, Edward Levi, John McGee, Aaron Director, and John Jewkes at the conclusion of a conference on the law-economics studies.



## Bigelow Fellows 1953-54

JOHN BODNER, JR., was born on May 4, 1927, in Wharton, a small town in northern New Jersey. Upon completion of his secondary education at Wharton High School in 1945, he enlisted in the United States Army, serving for a period of a year and a half. He was discharged from the Medical Corps in 1946 with the rank of sergeant. With the completion of his undergraduate work in the Liberal Arts College of Cornell University, Ithaca, New York, he enrolled at the Northwestern University School of Law in 1950, graduating with an LL.B. in 1953. While in Law School he served as articles and reviews editor on the staff of the *Northwestern University Law Review* for the academic year 1952-53. This year he was also admitted to the District of Columbia Bar.

DONOVAN W. M. WATERS was born at Brighton, Sussex, England, on April 23, 1928, and educated at Xaverian College and Varndean County Grammar School, Sussex. In 1946 he took the London Higher School Certificate with distinction. From 1947 to 1949 he served with the Royal Air Force in the Education Branch and spent his time in the British and American zones of Germany and Austria. In 1949 he entered Wadham College, Oxford, and was made a Scholar of his college in 1950. He was awarded two open university scholarships—the Winter Williams Law Scholarship in 1950 and the Gibbs Law Scholarship in 1951. He took his B.A. (Jurisprudence) with honors in 1952 and the B.C.L. with honors in 1953.

LESTER MORTON BRIDGEMAN was born in Paterson, New Jersey, on September 28, 1923. He attended public schools in Paterson and Brooklyn, New York, and was a student at Brooklyn College in 1941-42. In 1942 he enrolled at Syracuse University but in December of that year joined the United States Army, serving with the Armored Force. Part of his service time was spent at Louisiana State University and Shrivenham American University (England). After discharge in 1946 he re-entered Syracuse University and received an A.B. in political science in 1948. Continuing his education at the Columbia University Law School, he was awarded the LL.B. degree in June, 1951. During the summer of 1951 he served as a Law Clerk Trainee with the Office of Chief Counsel, Office of Price Stabilization in Washington, D.C. From September, 1951, to September, 1953, he was an attorney in the Litigation and Research Division of the Office of the General Counsel, Civil Aeronautics Board. He is a member of the bar of the District of Columbia and of the United States Court of Appeals for the District of Columbia Circuit.

DAVID CHARLES MILLER YARDLEY was born on June 4, 1929, in Lichfield, Staffordshire, England. Educated at King Edward VI School, Lichfield, The Old Hall School, Wellington, and Ellesmere College, Shrop-

shire, he entered the University of Birmingham Faculty of Law in July, 1946, being admitted to the degree of LL.B. (1st Class Honors) in 1949, and awarded the Lady Barber Post-Graduate Scholarship. Joining the Royal Air Force for his period of National Service, he was demobilized in 1951 as a Flying Officer, thereafter entering Lincoln College, Oxford, and being called to the bar at Gray's Inn, London, in 1952. Receiving his D. Phil. degree in law in 1953, he was then elected to a Fellowship and Tutorship in Jurisprudence at St. Edmund Hall, Oxford, whither he will return in the summer of 1954.



The 1953-54 Bigelow Fellows (left to right): Lester Bridgeman, John Bodner, Donovan Waters, and David Yardley.



The 1953-54 University of Chicago Law School Moot Court team (left to right): Paul Wenger of West Hartford, Connecticut; Harold Ward III of Winter Park, Florida; and Marvin E. Stender of Chicago. The Chicago team made the semifinals in the national competition and came home with the award of the Harrison Tweed Silver Bowl in recognition of the best brief presented in the Moot Court contest.

*Dunham* (Continued from page 4)

but that they used this contractual power, if at all, only to retain nonlegals. They considered it too risky for the individual fiduciary to invest in nonlegals, and they were not conscious of any surcharge risk in being too cautious. The corporate trustee acted the same way, however. The best investment was a real estate five-year term mortgage usually renewed as of course.

Corporate trustees are not part of banks as here but are part of fire and casualty insurance companies. They originated as a convenience of the stockholders of the insurance companies and even today do not make a determined effort to get new business from other sources.

Part of the Fulbright scholar's task is of course to help interpret and explain the United States to his host country. Except for Dean Griswold, who spent a few days there en route to Australia, I apparently was the first American lawyer to spend time enough in the country to visit lawyers. And I had a time trying to explain not only the formal organization of our judicial system but also its operation to lawyers whose only knowledge of American courts comes from Perry Mason and Hollywood movies. I was frequently asked whether all American lawyers did detective work like Perry Mason.

An occasional contact with an American court sometimes confirms their suspicions. One lawyer steeped in the dignified aloofness of their own judicial tradition and the carefulness of their courts was confirmed in the dim view he had of our system when he received an official letter from the clerk of a Florida court on stationery containing a picture of an orange tree and a booster slogan for the local county. I saw the letter, and he was much more upset by the orange tree than by the fact that notices to appear in a divorce case sent by surface mail had arrived two months after the date set for appearance or that from the language and spelling in the letter the clerk of the Florida court and his stenographer appeared to be illiterate.

Hollywood movies had convinced many lawyers that our lawyers adopted the following procedure in arguing cases to a judge. The lawyer first seated himself with his feet dangling on the judge's bench; then he put out his fist almost in the judge's face; then in a loud and angry voice he began talking to the judge by saying, "Now, Bell, you must decide for my client because. . ."

While the United States Information Service has documentary films about many aspects of our life, they have none about our legal system. In response to an inquiry I made to the American Bar Association, I found that the Association and State Department were preparing such a film but too late to help me.

Not only is New Zealand short on knowledge of our legal system; it is also weak on our legal literature. The four main Supreme Court libraries have the United States Supreme Court reports up to 1938, when they

decided *Erie R.R. Co. v. Tompkins* made our Court relatively useless as a common-law court. Two of the four have *American Law Reports Annotated* and its predecessors, and the West Publishing Company has just given a set of *Corpus Jure's Secundum* to one of the university libraries. With the exception of an early edition of *Williston on Contracts*, all American textbooks in the Supreme Court libraries were nineteenth-century books such as Kent, Story, Elliott, Redfield, and Greenleaf. Oddly enough, in the early days of New Zealand (1840-60) Kent's *Commentaries* seem to be cited more by their Supreme Court than is Blackstone. As a result of generosity of some of our publishing houses, the university libraries are beginning to get a few American teaching books. The dollar shortage of course complicates their problem.

There is, I think, much more knowledge of our affairs among the populace generally than I think most Americans would exhibit concerning British Commonwealth affairs. There was such an amazing preoccupation with Senator McCarthy that I found myself always requested to speak to organizations on some aspect of the investigations. As a guest I felt a certain obligation to accede to their requests, although once or twice I tried unsuccessfully to speak on more palatable topics such as how successful our private housing programs were or the merits of a competitive economy. I complained once that the only topics on which I was asked to speak were McCarthyism, crime in the United States, or our meat and butter tariff.

Their concern with the meat and butter tariff is obvious, but I was considerably puzzled by their concern with McCarthyism. They seemed to draw the conclusion that such investigations meant that we were heading toward fascism. I tried to tell them that this was nonsense, and those who had been in the United States admitted to me that they knew it was. There was also an amazing amount of naïveté concerning the problems which have produced the investigations, and I attributed this in part at least to their geographical isolation from such matters.

I hope I have not suggested that the New Zealanders are odd or were anti-American. They have an amazingly high standard of living and were exceedingly pleasant to my family and me. We could not have asked for more.

Even though we were over nine thousand miles from the University of Chicago, we found one contact with The Law School. Our guide on the Tasman Glacier was the same guide that Stanley Kaplan '33 had had only a few weeks before. We spent the school holidays in sight-seeing, and without doubt the scenery in New Zealand is among the best in the world. The Southern Alps, with many glaciers terminating among the tree ferns in almost tropical rain forest, are truly as wondrous as their advance publicity. But it is good to be back at the University again.



### Rheinstein (Continued from page 5)

sary to define the concepts of family stability and family breakdown. It is, second, necessary to obtain statistical data as to the factual incidence of family breakdown. Statistics of divorce rates are of little significance in this respect. Even in a country like Italy, where no divorce exists at all and where the divorce rate is consequently zero, some people abandon their spouses, or have mistresses or lovers, or agree upon separation. How can such facts be ascertained? Finally, if we know the facts and their changes in time or differences in place, how can they be correlated with changes or differences in the divorce law? If we should find, for instance, that in legally conservative Italy the incidence of actual family breakdown is greater than in Sweden with its liberal divorce law, can we conclude that the difference in the facts of life is caused by the difference in the laws? Such a conclusion would be premature. The difference of the laws may have some influence, but there are other factors, such as religion, social traditions, economic circumstances, etc. Can the factor "law" be separated from all the others and, if so, how?

This is the complex of problems with which we have concerned ourselves for some time in the University of Chicago Comparative Law Research Center. The decision of the Chicago-Frankfurt Committee to place these problems upon the agenda of the exchange program provided a welcome opportunity to attack them in the most effective of the methods of comparative law, viz., that of international and interprofessional co-operation.

A preliminary program for the Frankfurt phase of the study was worked out in advance by Professor Hughes; Professor Nelson Foote, director of the University of Chicago Family Study Center; Mr. Litwak; and myself. Pursuant to this program and in co-operation with Professor Max Horkheimer, rector of the University of Frankfurt and director of the Frankfurt Institute of Social Research (Institut für Sozialforschung), and with other members of the faculty of the University of Frankfurt and the Institute of Social Research, it was decided to organize four seminars as well as to set up a special research project.

The core of this set of investigations was constituted by the seminar on "The Family and the State." In it we tried to elaborate an analytical survey of the problems involved and methods for their solution. This seminar was conducted jointly by Professor Hughes, Professor Ernst Wolf of the Law Faculty of the University of Frankfurt, and myself. It was attended with considerable regularity by Professor Pollock, Doctor Osmer, and other members of the Institute of Social Research; Professor Spira and Dr. Meinecke of the English Department of the University; and Professor Helmut Coing of the Law Faculty. Professor Horkheimer was present as often as his heavy duties as rector of the university allowed him. The twenty-five students who participated



*Herbert F. Jolowicz, Regius Professor of Civil Law at Oxford University, with Mrs. Jolowicz and students in front of Beecher Hall during their visit to The Law School. Professor Jolowicz spoke on October 16 on "The Construction of Statutes According to the Civil Law." He was introduced by Professor Max Rheinstein.*

in the seminar came mostly from social science, but there were also representatives of social work, English studies, philosophy, medicine, and chemistry.

Helped by papers presented by members of the Chicago team and the students, the seminar discussions concerned themselves with basic methodological questions. The results are presently being worked over by Mr. Litwak, whose report will be available shortly.

The second seminar, entitled "Problems of the Law of Marriage and Divorce," was held in the Faculty of Law under the joint direction of Professor Ernst Wolf and myself. It was attended by some thirty students of the Faculty of Law. Three of the sessions were devoted to those problems which have become acute in Germany by the legislature's failure to implement the constitutional command of legal equality of the sexes. In this connection we dealt with the question of what changes, if any, were required by this constitutional provision to be made in the laws concerning marriage and marital property rights, and how these changes could be worked out by the courts in the absence of legislation. Parenthetically it may be observed that these seminar discussions resulted in the conclusion that in German marriage law the sexes are already treated as equal to such an extent that few changes would seem to be necessary.

At the other sessions of the seminar, student members presented papers dealing with the actuality of divorce practice in the courts, attorneys' offices, and marriage counseling agencies. Most of these papers were of high quality and full of valuable information.

The third seminar was conducted by Dr. Osmer of the Institute of Social Research for students of that Institute. In its preparation he was advised by Professor Hughes, Mr. Litwak, and myself. The aim of the seminar was to elaborate a questionnaire for a popular

opinion poll concerning opinions held by the public on causes of family breakdown, the law of divorce as it is, and the law as it is thought it should be. A carefully worked out questionnaire emerged from this seminar and will be used in future research.

The fourth seminar, which was conducted in the English Department by Dr. Meinecke, was concerned with the problem of the reflection of changing attitudes toward family breakdown and divorce in English and American literature of the twentieth century.

The special research project was undertaken by Mr. Stoljar and Mr. Müller as an investigation into the development of the law and practice of divorce in Germany since the Reformation. Once completed, this study will parallel those which have already been undertaken in the University of Chicago Comparative Law Research Center on France, England, Switzerland, and the Scandinavian countries. The study of Germany is in itself so extensive, however, that in the short time of one semester no more than certain parts could be completed by the investigators, whose time, as can be seen from this report, was occupied with other, heavy commitments. Their work will be continued during the present academic year in the University of Chicago Comparative Law Research Center by Mr. Hermann Kraus.

During the period of my stay in Germany I was invited by several universities to lecture on the problem of divorce in the United States of America. Such lectures were delivered at the universities of Göttingen, Marburg, Mainz, and Freiburg.

At the invitation of the Karl Schurz-Stauben Society I delivered at the annual meeting of its members an address on the topic, "Some Observations on Cultural Co-operation between the United States and Germany."

In July a two-day reunion was had at Bad Homburg with members of the German Referendar Group that attended the University of Chicago Law School in 1950. It was gratifying to observe the thankful affection with which the participants remember their stay in the United States and at our Law School and how deep an impression this stay has left with them.



Jean Allard '53, now a Research Associate on the Law and Behavioral Science Project, was one of the guest speakers at the Alumnae Breakfast during Reunion Week last June.

## In Memoriam

It was with deep regret that we learned in recent months of the death of five alumni of The Law School.

WILLIAM EUGENE STANLEY '13, of Wichita, Kansas, died on September 26, 1953. The son of the fifteenth governor of Kansas, Gene Stanley was a leading figure in the Kansas Bar. He was editor of the *Journal of the Bar Association of the State of Kansas* from 1921 to 1940, in which year he was elected president. Always active in the affairs of the American Bar Association, he was a member of the Board of Governors from 1942 to 1945 and chairman of the Committee of Ways and Means since 1946. As chairman of the committee he devoted himself generously to raising funds for the American Bar Center. Untiring in his efforts on behalf of local, civic, and fraternal organizations, he also served as a member of the Conference of Commissioners on Uniform State Laws, as vice-president from 1940 to 1943, president in 1943-44 and 1946-47, and as chairman of the Executive Committee from 1947 to 1949.

Always a loyal and interested alumnus, in recent years he participated in the School's activities as a member of the Visiting Committee.

TOM LEEMING '22 died in Chicago on June 18, 1953. From 1923 until his death he was a member of the firm of Eckert, Peterson and Leeming.

ALBERT E. BOWEN '10 died in Salt Lake City, Utah, on July 15, 1953. A member of the Council of the Twelve of the Church of Jesus Christ of Latter-Day Saints, Albert Bowen was a leading citizen of Salt Lake City and one of the outstanding irrigation lawyers of the West. He was former president of the Deseret News Publishing Company.

HERBERT BEBB '13, who died in Chicago this fall, was a former president of the City Club of Chicago and for more than twenty years chairman of its Race Relations Committee. After many years of practice in the firm of Reinhardt, Bebb and Davis, he retired in 1951 to become a full professor at the John Marshall Law School.

CORNELIUS TENINGA '15 died on July 18, 1953, in Chicago. As a graduate of the University in 1912 and a member of the famous Class of '15 in The Law School, Cornelius Teninga maintained a close interest in the University throughout his life. While operating his own real estate firm, he was also president of the Chicago Real Estate Board and was active in establishing the Chicago Fair Rent Committee. He was also vice-president of the Chicago Metropolitan Home Builders Association.



### *Jewkes* (Continued from page 10)

bluntly, but for the fact that I find it expressed so forcefully by someone better known to you than to me. Of the long line of distinguished presidents of the University of Chicago, the one whose career most intrigues me is Ernest DeWitt Burton. He was in fact president for only two years, although he served the University and the world faithfully as scholar, as practical Christian, and as administrator for many years before that. Burton, of course, had a world-wide reputation as a New Testament scholar, and I have no doubt that he would have been quite happy to live out his days in his study. But fate called him into the more active work of the world, culminating in his period as president. And as an administrator he revealed incredible powers of intellect, endurance, and of skill in handling men. At the age of sixty-eight he set himself the task of raising seventeen million dollars (and these were 1923 dollars) within two years—and, if possible, in one—in order to make actual his dreams of more men and more buildings for his university. And he went a long way along that route before he died suddenly two years later. Now I was very curious about this scholar *cum* administrator *cum* businessman, a man raised in the classics who had achieved such high performance in so many fields. What had his education to do with his subsequent achievements? What connection had there been between his struggles with a Greek text and his power to get things done in the active world? And, to my delight, he had put the whole story in one sentence. He had seen that the two jobs were the same, that training for one was training for the other. President Burton had put his golden rule, what he had derived from the classics, in this way: "One thing after another, try and try again, don't quit until you have done it." That is the best description I have ever heard of what education means. Much better than many more elaborate prescriptions given to us in these days all over the world about how we should raise the young. And if we could find even a proportion of our young men instinctively facing up to a tangled issue in that way, then we as teachers could really feel that we were earning our corn.

But now I see that Dean Levi is looking rather anxious. With his administrative intuition he knows that if he lets this sort of nonsense go too far, someone will try to plant a professor of Greek in the Law Department. I am sure, in this respect, that his instinct would be sound. I am even prepared to believe that Greek really is not what it used to be. But I am quite sure that the young men in any law school will find their mental muscles being toughened by some exposure to the methods of thought built up by economists over the last two hundred years, and I shall, therefore, go on, hoping that to have for a period another professor, from another university and another country, doubtless with rather different ways of going at things, may add something to what is already being provided by the small but highly distinguished



*The Chicago Alumni Luncheon at the A.B.A. convention*



*At the Chicago meeting during the A.B.A. convention (left to right): Glen A. Lloyd '23, Ross W. Schumaker '23 of Toledo, Ohio, Professor William Crosskey, and Andrew J. Dallstream '17.*

and devoted group of teachers of economic science already found in your Law School.

So the third reason that I grabbed with both hands at the chance of teaching, and doing research, among your young men is that I believe there is no one royal road to educating everybody. Ideally we should educate every student separately. But we cannot do that. The next best thing is to leave the student free to try out more than one route in the kind of wisdom so pointedly phrased by President Burton. That surely must be the final delight, although the ultimate anxiety, of any teacher who accompanies the student in his experimenting with his own mind. That somehow, sometime, by methods which may be least expected to succeed, the teacher may suddenly provide a key unlocking a door to the world of clearer and wiser systematic thinking for at least one of his students. Your Law School has given me the opportunity of taking part in this absorbing task with some of the young men upon whom, as I have said, we must so heavily rest our hopes for the future. And I am very grateful for it.

*Gossett* (Continued from page 6)

In the beginning at least, the law, as expressed by judicial decision, permitted large business organizations to do almost anything they wanted to do so long as it was within the group's economic interest. Consider, for example, the *Mogul Steamship* case, a leading case decided in England in 1892.

A combination of steamship companies, operating between England and the Far East, had acted in concert to freeze out a newcomer in the field, in order to secure the whole of the particular trade for the combination. By offering rebates to all shippers who used its ships exclusively, by cutting their freight rates below cost, and by dismissing any agents who acted for the new company, the combination eventually forced the new company out of business and into bankruptcy. The trustees in bankruptcy brought suit for damages and sought an injunction against future conduct of the same character.

The case was carried to the House of Lords. The final decision was that the plaintiff could not recover. The House of Lords said that, although serious harm had been done to the plaintiff through the actions of the combination, this lay within the defendant's area of legitimate economic interest because it was done for self-advancement and self-protection. The combination of steamship companies, in the opinion of the House of Lords, had "done nothing more against the plaintiffs than to pursue to the bitter end a war of competition waged in the interest of their own trade."

It is almost incredible that only sixty-one years ago society so readily allowed large corporations to assume such broad rights to fight for private gain.

It applied the same rules to big business that it had applied to the dealings of individuals; and these powerful new organizations accepted the grant without recognizing that great power imposes great responsibility; that freedom of contract and freedom to compete too easily may become abuses when exercised by the strong. And many of these powerful new associations failed to recognize, as the law had not yet recognized, that they could not morally and ethically exercise to the limit the legal rights that had been accorded to those holding less economic power.

I need not recount the abuses of those tumultuous years. As early as 1886 a Senate committee reported on many of them: discriminatory agreements on freight rates, secret rebates, for example.

But even before the House of Lords laid down its conservative ruling in the *Mogul Steamship* case in 1892, a change in public attitudes toward the methods employed by large corporations was beginning to stir in this country. In 1884 an antimonopoly party appeared; and by 1888 both major parties had become so sensitive to increasing public clamor for reform that they felt obliged to condemn "the trusts."

The response of the law to this clamor is a familiar



University Trustee, George A. Ranney, Jr., left, and Professor Philip B. Kurland were hosts at one of the tables at the new students' dinner. Other members of The Law School's Visiting Committee and of the Alumni Board joined in welcoming the new students and hearing the address by Ford Vice-President William Gossett.

chapter in our political history: the Interstate Commerce Act was enacted in 1887; the Sherman Antitrust Act in 1890; and following these, as the needs arose, the Federal Trade Commission Act, the Wilson Tariff Act, the Clayton Act, the Robinson-Patman Act, and a host of other federal and state statutes, designed to curb the power of big business.

Through these statutes, the people made it clear that they expected big business, as they had always expected individuals, to observe the overriding moral principles embodied in basic precepts such as the Golden Rule.

In 1913 the Supreme Court of the United States was presented with a case involving conduct substantially similar to that which had been condoned in the *Mogul Steamship* case. Several steamship companies joined forces with an Alaskan wharfage company and a connecting railway company to prevent and destroy competition by other steamship companies in the transportation of freight and passengers between the United States and Alaska. The wharfage and railway companies, which were the only ones in the area, granted preferential rates to shipments carried by the defendant steamship companies. The Supreme Court found that the purpose of the combination was "the prevention or destruction of competition" and summarily rejected attempts to justify the defendants' action, holding that the conduct violated the Sherman Act.

The Robinson-Patman Act illustrates another lifting of the standard of conduct demanded of business in its competitive struggle. It prohibits large companies from using their economic strength to secure price preferences over their competitors. Similarly, under the Federal Trade Commission Act, the Commission has been given broad power to prohibit any conduct which it determines to constitute "unfair methods of competition" or "unfair or deceptive acts or practices."



By these and other means, our large aggregations of capital have been subjected to an ever ascending standard of conduct in their dealings with other businesses. But there is another field that even more strikingly illustrates the law's demand of ethical conduct from large and powerful groups. I refer to the dealings between management and labor.

The development of law to govern this relationship followed essentially the same course as that affecting dealings between business organizations. Indeed, the problem historically was the same. Big labor, like big business, was an outgrowth of the response of our industrial system to technological developments beyond the contemplation of existing law. The laws governing the relationship between the two, therefore, had to evolve in response to specific trends and events that began to assume commanding proportions in directing the social and economic life of the nation. It was not a matter of labor's being set up in mortal opposition to management, with the law required to act as referee in the death struggle. The nature of the conflict was less dramatic. Here were two great forces let loose by the accelerated evolution of our society, forces that had the same parent and the same potentiality for harm. The role of the law was what the body politic required of it: the reconciling of both forces with the general public interest and with changing mores. In the words of Mr. Justice Holmes, in both cases the law had less to do with any syllogism than with the felt needs of the time, with the climate of public opinion. The general trend of judicial opinion and of legislative action in the labor sphere was a reflection of felt needs already vaguely comprehended—even if not defined—by public opinion.

Thus, in the case of labor, as in the case of big business, the law at first applied was unsuited to newly developing conditions. The rules also had been developed in a less complex age. At the beginning the mere joining-together of employees to present demands was condemned. In the famous *Philadelphia Cordwainers' Case*, in 1806, a group of Pennsylvania leather-workers were indicted and convicted for just such action. In those days employees were expected to deal individually with employers or not at all. And that too often meant not at all, with the growing size and strength of employers. Thus, the established rule of conduct for employees was submission, as to wages, as to hours, and as to working conditions. The treatment of employees in those days could scarcely have been described as the Golden Rule at work.

But again our standards of ethics eventually asserted themselves. At first it came about by the application of a much more rudimentary principle than the Golden Rule. The courts said, "At least we will not prevent you from joining together and becoming more powerful so that you can deal with your employer on more equal footing." In essence they said, "We cannot stop the fighting, but we will let you try to make the con-

flict fair." The trend of the law during the next century and a half kept pace with the popular reversal in attitude toward the status of the individual workman and toward the organizations he formed to accomplish his objectives.

Thus, in 1842, the Supreme Court of Massachusetts was called upon to render judgment in a case involving seven members of the Boston Journeymen Bootmakers Society, who had been convicted of organizing a strike against an employer because he had hired, and would not fire, a nonmember journeyman bootmaker. The court, through Chief Justice Shaw, found that what the union members were trying to do was to increase their membership and thus to secure power, which, if exercised for legitimate purposes, was not illegal.

The law of industrial relations was dominated for many years by this very rudimentary principle of fairness. Except for some limitation on the weapons which might be used, the law stood back and said, "Let the best man win." Thus, the developments in the law during those years consisted primarily in expanding the arsenal of weapons allowed to labor.

Fifty years after the *Cordwainers' Case*—when most American courts had come to accept the right of organized workers to strike for such direct benefits as higher wages and shorter hours—the Supreme Court of Massachusetts had occasion to pass on the legality of picketing. The majority approved an order forbidding the picketing; but Mr. Justice Holmes, in a widely quoted dissent, had this to say:

It is plain from the slightest consideration of practical affairs, or the most superficial reading of industrial history, that free competition means combination, and that the organization of the world, now going on so fast, means an ever-increasing might and scope of combination. It seems to me futile to set our faces against this tendency. Whether



Professor William Crosskey met with Chicago alumni during the sessions of the California State Bar Association at Monterey. At the California meeting arranged by Philip Laurence '42, of San Francisco, Professor Crosskey spoke on "Politics and the Constitution." During his trip West Mr. Crosskey, joined by Assistant Dean James Ratcliffe, also visited with alumni in Salt Lake City, at a luncheon arranged by Judge Willis W. Ritter '24 and representatives of the Utah bench.

beneficial on the whole, as I think it, or detrimental, it is inevitable, unless the fundamental axioms of society, and even the fundamental conditions of life, are to be changed. . . . One of the eternal conflicts out of which life is made up is that between the effort of every man to get the most he can for his services, and that of society, disguised under the name of capital, to get his services for the least possible return. Combination on the one side is patent and powerful. Combination on the other is the necessary and desirable counterpart, if the battle is to be carried on in a fair and equal way.

Here again the simple concept of fairness to which I have referred was at work. The approach was to strengthen the unions, not to raise the standard of either side in its dealings with the other. Both sides were guilty of unfortunate conduct that scarcely could be justified under higher moral standards.

The higher principles embodied in the Golden Rule as yet remained silent in our labor relations law. But eventually they found outlet. The first preliminary step came with the Norris-La Guardia Act in 1932. In some respects it was but a reiteration of the equal-strength idea of fairness, this time by removing weapons from the employer's arsenal rather than giving new weapons to the unions. Among other things, it prohibited the federal courts from enforcing so-called "yellow-dog" contracts or from granting labor injunctions, which had been receiving more and more indiscriminate use. But the act was more than just a rule for the conflict. Concerning the "yellow-dog" contract, it said to the employer, "It is unfair of you, through economic coercion or otherwise, to make your employees agree not to join a labor union. You are interfering with their freedom."

This preliminary step was followed in 1935 by the National Labor Relations Act. It imposed upon employers a comprehensive obligation to respect the Golden Rule in their dealings with organized labor. Whereas the Norris-La Guardia Act barred a narrow type of interference, the Wagner Act by its terms barred all interference with employees' freedom to organize and to bargain collectively; and it imposed upon employers the affirmative duty to bargain with selected representatives of their employees.

Employers thus were forced to learn what many of them had failed to recognize voluntarily—that in the exercise of their economic power in dealing with organized labor, they were subject to the same fundamental ethical standards that govern individual action.

The statute did not purport to deal with the standards of organized labor, which over the years, and particularly under the encouragement of these statutes, grew to embody a power which surpassed that of even our largest corporations. But the Golden Rule is not a one-sided doctrine. When big labor grew so powerful that it presented the same dangers of abuse that big business had presented in earlier years, the people again intervened.



*Brainerd Currie, former Dean of the University of Pittsburgh Law School, who joined our faculty this fall.*

During the early months of 1937 the sitdown strike was first employed. The law responded quickly. The court decisions, both federal and state, uniformly condemned it, as do all the statutory enactments on the question. Irresponsible labor groups received a strong initial lesson that the public expected them, too, to respect the Golden Rule.

Other practices by big labor had developed over the years that violated the moral sense of the community; for example, the secondary boycott, and so-called "featherbedding"—that is, forcing an employer to hire more employees than he needs or particular craftsmen that he does not require.

Perhaps the extreme of abuse was reached in *Hunt v. Crumboch*, where a union, out of personal antagonism for a member of a trucking partnership, drove the firm out of business by forbidding any union members to work for it. The union knew that the only haulage available was for concerns already committed to dealing only with unionized truckers. In an action brought by the trucker under the Sherman Act, the court found for the union. It conceded, though, that "had a group of petitioner's business competitors conspired and combined to suppress petitioner's business by refusing to sell goods and services to it, such a combination would have violated the Sherman Act."

The Taft-Hartley Act was the corrective measure adopted in 1947. It is not my purpose tonight to discuss the controversial provisions of that law or to suggest that it has disposed finally of the problem of controlling union conduct. It did impose upon labor unions an obligation in diverse fields to respect the rights of others, both employers and employees. Secondary boycotts and featherbedding, to revert to the illustrations I have mentioned, both were prohibited. In addition, whereas the Wagner Act imposed on employers the obligation to bargain in good faith with the unions, the Taft-Hartley Act followed up with the correlative requirement that unions act in good faith in bargaining with employers.

The act went beyond merely the relations between





This year's Managing Editors of the "Law Review" (left to right): Alan Rosenblatt, Theodore Rosenach, and Harlan Blake.

unions and employers and between unions and employees; it showed the importance of the Golden Rule in the relations of labor unions among themselves. It prohibited a strike or boycott for the purpose of forcing an employer to recognize a union when another union has been certified as the representative of the employees—the so-called jurisdictional strike.

Finally, the act recognized big unions as entities which should be responsible for their actions, subject to suit and liable for breaches of their undertakings.

In thus wielding their legislative power, the people seemed to say to large corporations and to labor: "Now you are big. We needed your size to get things done. But the time has come for you to get adjusted to one another and conduct yourselves like civilized human beings, conforming your actions to the principles of ethics generally accepted for individuals."

I would like to go back for a moment to the individual and his code of conduct, considered on the basis of legal rights. So accustomed are we to talk about our rights as individuals that we tend to forget how we attained those rights. Actually, every "right" we have was bought and paid for by granting a similar right to others.

Primitive man started with unlimited rights—the right to everything he could get and the right to keep it as long as he could hold on to it. He could kill; he could rob; he could plunder; and he did. But he also ran the constant risk of being robbed and killed himself.

At some point during the long struggle man began to realize that he was a creature of warring instincts within himself: a thing of good and a thing of evil—evidenced both by a desire to kill and a desire to love—an urge to tear things apart and an urge to create.

Quite aside from the natural inclination of man, as the creature of God, to accentuate the good in him and subdue the evil, he undoubtedly was motivated by considerations of expediency to do so. Thus he was led to

take the next step: he began to see that he could live longer and more happily if he loved more and hated less. For, when he loved, he stood a good chance of getting love in return; and, when he hated, he got back hate and violence with interest. Thus, the parallel code was evolved.

Many years later Solon the Athenian law giver extolled the virtues of the code in these terms:

Such power I gave the people as might do,  
Abridged not what they had, nor lavished new,  
Those that were great in wealth and high in place  
My counsel likewise kept from all disgrace.  
Before them both I held my shield of might,  
And let not either touch the other's right.

As I have suggested, one of the great accomplishments of our time has been to formulate rules that require of enormous aggregations of people the same kind of moral conduct that is expected of each individual in the group. Adjustment of these rules to meet the changing needs of society is by no means complete; on the contrary, it is a never ending process, a process in which most of you will have a part if you are to meet your full responsibilities as members of a noble profession.

The millennium has not been achieved. But the principle is well established, I think, that, when either management or labor habitually acts in a manner inconsistent with the standards of conduct that have been generally accepted for individuals, the people will take appropriate action to correct the situation; that society will not tolerate, on the part of a group, action that it finds intolerable in the individual.

Group morality may lag behind individual morality, but it must follow and be shaped by it in the end. Little by little we realize that our own hopes and destinies are irrevocably linked to the hopes and destinies of our fellowmen.

May I conclude in the words of Mr. Justice Holmes:

I do not pin my dreams for the future to my country or even to my race. I think it probable that civilization somehow will last as long as I care to look ahead—perhaps with smaller numbers, but perhaps also bred to greatness and splendor by science. I think it not improbable that man, like the grub that prepares a chamber for the winged thing it never has seen but is to be—that man may have cosmic destinies that he does not understand. And so beyond the vision of battling races and an impoverished earth I catch a dreaming glimpse of peace.

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